IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/07/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.5802 OF 2000
and
W.M.P.No.36823 OF 2001

S. Dhakshinamurthy .. Petitioner

Vs.

1. The Deputy Commissioner of Labour
(Appeals), The Appellate Authority
Under the Payment of Gratuity Act,
Teynampet, Chennai 6.

2. The Assistant Commissioner of Labour,
The Controlling Authority under the
Payment of Gratuity Act, Teynampet,
Chennai 6.

3. The Management of Syed
Nizamuddeen & Company,
Old Washermenpet, Chennai 21.

4. Thiru Abdul Latheef,
Contractor,
Syed Nizamuddeen & Company,
Old Washermenpet,
Chennai 21. .. Respondents

Petition filed under Article 226 of the Constitution of India for
the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.D. Hariparanthaman

For Respondents1-2 : Mrs.N.G. Kalaiselvi
Special Government Pleader

For Respondent-3 : Mr. Meenakshi Sundaram

:J U D G M E N T

The present writ petition is directed against the order dated 18.2.1998 passed by the Assistant Commissioner of Labour, the Controlling Authority under the Payment of Gratuity Act, as confirmed by order dated 10-11-1998 passed by the Deputy Commissioner of Labour (Appeals), the appellate authority under the said Act, rejecting the application of the present petitioner for payment of gratuity.

2. Undisputedly, the present respondent No.3 is a Trade Mark holder and manufacturer of Beedies. The petitioner claims that the third respondent had engaged home workers through different contractors. It is further claimed that the petitioner was employed as a home worker under the third respondent from 1971. Subsequently, on completion of 58 years, the petitioner submitted letter of resignation before the third respondent and thereafter filed

application before the second respondent claiming Rs.27,260/-. Before the second respondent, the third respondent had filed objection raising the question of limitation and also stating that the present petitioner was employed under the contractor Mr. Murugesan from 1986 till 1995 and thereafter he was engaged under Abdul Latheef (4th respondent in the writ petition) till 1997 and there was no relationship of employee and employer between the present petitioner and third respondent and, as such, the third respondent is not liable to pay any gratuity. The fourth respondent, who was subsequently impleaded before the second respondent, also filed objection on similar line. The other contractor Mr. Murugesan, who had expired by then was not impleaded as respondent before the second respondent.

3. The second respondent rejected the application by holding that the petitioner had been employed under the Contractors and not under the present third respondent and the petitioner may claim his gratuity against Murugesan, but no amount was payable by the other contractor Abdul Latheef as the petitioner had not completed five years of service under the latter contractor.

4. The petitioner preferred appeal before the first respondent. The first respondent found that “the petitioner had been working under the contractor of the first respondent” (meaning thereby the present respondent). He was found that the contractor, who provided employment to the petitioner was the principal employer and the petitioner can claim gratuity only from the contractor under whom he worked as a home worker and since he had worked under Abdul Latheef for less than five years and had not directly worked under the present respondent No.3, gratuity was not payable by either the third respondent or the fourth respondent. On such findings, the appeal was dismissed giving rise to the present writ petition.

5. Section 2(e), 2(f)(i) and 2(g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 being relevant are quoted hereunder :
2(e) - “contract labour” means any person engaged or employed in any premises by or through a contractor, with or without the knowledge of the

employer, in any manufacturing process;
2(f) – “employee” means a person employed directly or through any agency, whether for wages or not, in any establishment or godown to do any work, skilled, unskilled, manual or clerical, and includes -
(i) any labour who is given raw materials by an employer or a contractor for being made into beedi or cigar or both at home (hereinafter referred to in this Act as “home worker”), and
(ii) . . .
2(g) – “employer” means, -
(a) in relation to contract labour, the principal employer, and
(b) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name;

6. The learned counsel appearing for the petitioner has submitted that in the present case the petitioner had been engaged as home worker under the contractors of the third respondent and, as such, in view of the provisions contained in Section 2(g), it should be taken that the third respondent was the principal employer and, as such, liable to pay the gratuity to the petitioner. The learned counsel appearing for the respondents refuted the aforesaid contentions and submitted that in absence of relationship of employer and the employee between the third respondent and the petitioner, third respondent is not liable to pay any gratuity and the remedy of the petitioner lies against Murugesan under whom he had worked as a home worker.

7. In the Constitutional Bench decision of the Supreme Court reported in 1974 (I) L.L.J. 367 (MANGALORE GANESH BEEDI WORKS AND OTHERS Vs. UNION OF INDIA AND OTHERS) while considering the constitutional validity of the Act, the Supreme Court had occasion to observe as follows : -

“ In cases where the manufacturer or trade mark holder himself employs labour there is direct relationship of master and servant and, therefore, liability is attracted by reason of that relationship. There cannot be any question of unreasonableness in such a case. In the second category, the manufacturer or trade mark holder engages contract labour through a contractor and he becomes the principal employer. Though such labour may be engaged by a contractor with or without the knowledge of the manufacturer or trade mark holder, this contract labour is engaged for the principal employer, who happens to be the trade mark holder or the manufacturer. The liability arises by reason of contract labour engaged for or on behalf of the principal employer. In the third category, the contractor becomes the principal employer because the contractor engages labour for or on his own behalf. Where the contractor engages labour for the manufacturer it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. It is important to

notice that the Act fastens liability on the person who himself engages labour or the person for whom and on whose behalf labour is engaged or where a person has ultimate control over the affairs of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment". (Emphasis supplied)

8. Out of the three categories as explained in the aforesaid observation of the Supreme Court, admittedly the petitioner does not come under the first category as it is not his case that he was directly employed under the manufacturer respondent No.3. The petitioner claims that he comes under the second category wherein the manufacturer had engaged contract labour through a contractor and, as such, the manufacturer should be considered as a principal employer. Even though the third and fourth respondents have faintly suggested that possibly the petitioner comes under the third category, there is no material on record to uphold such a contention. It has to be noticed that in the objections filed by the third and fourth respondents before the second respondent, it was not categorically stated that the present petitioner was working under an independent contractor. In the objection of the third respondent it was stated that :

" It is learned by the Respondent that the Applicant worked under a Contractor namely Mr.M. Murugesan (Contractor No.15) from the year 19 86 till 1995 as a Beedi Roller, his Number being TN/18840/3. From 19 95 till 1.3.97 when he resigned, he worked under another Contractor Mr. Latheef (Contractor No.11), the Applicant's number being TN/18837/407".

Moreover, it was no where stated that the contractor, namely, Mr. Murugesan (Contractor No.15) and Mr. Latheef (Contractor No.11) were independent contractors. On the other hand, the present respondent No.4 , who was arrayed as second respondent before the original authority, stated "respondent-2 is a contractor to respondent-1 and is governed by a special law 'Beedi and Cigar Workers (Conditions of Employment) Act, 1966'. The Beedi is rolled by the home workers".

The aforesaid statement in the counter filed by the present fourth respondent, (particularly the underlined portion) makes it clear that in fact the present fourth respondent was a contractor under the present third respondent and the present petitioner had been engaged as home worker by the fourth respondent.

9. Apart from the above, the identity card in Form-E under Rule 41 clearly indicates that the present petitioner was engaged through contractor No.15, namely Murugesan. In the aforesaid document it was further clearly indicated that aforesaid Murugesan was a contractor of M/s. Syed Nizamuddeen, Tajmahal & Gopuram Beedies (present respondent No.3). The aforesaid identity card leaves no for doubt that the petitioner was engaged as a home worker under the contractor Murugesan for and on behalf of the present third respondent. Therefore, keeping in view the provisions contained in the Act and the observations made by the Supreme Court in the decision already noticed, there cannot be any escape from the conclusion that so far as the petitioner is concerned, the third respondent was the principal employer. The

original authority as well as the appellate authority without considering the effect of the provisions contained in the Act and the observations of the Supreme Court as well as the materials on record have come to the erroneous conclusion that the petitioner was engaged under the contractor and the liability was of the contractor.

10. The learned counsels appearing for the respondents as well as the authorities below have placed reliance upon paragraph 45 of the Supreme Court decision to the following effect :-

" . . . In the present case, it is not material to find out as to who can be called an independent contractor. It can be said that independent contractors are those who employ labour for and on behalf of themselves in so far as the present Act is concerned. The only scope for inquiry is whether a person has employed labour for and on his own behalf. If the answer be in the affirmative then such a contractor would be principal employer within the meaning of Section 2(g)(a)."

The aforesaid observation had been made by the Supreme Court while considering the validity of Section 2(g)(a) and there is nothing in the said observation which either directly or indirectly supports the case of the contesting respondents.

11. Therefore, for the aforesaid reasons, the orders passed by the respondents 1 and 2 are quashed and the third respondent is directed to pay the amount claimed by the petitioner along with 6 percent interest from the date of the application filed before the second respondent. Writ Petition is accordingly allowed to the extent indicated without any order as to costs. Consequently, WMP.No.36823 of 2001 is closed.

19-07-2002

Index : Yes
Internet : Yes
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P.K. MISRA, J.

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